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No. 244

In the Supreme Court of the United States

OCTOBER TERM, 1960

ARTEMIOS NTOVAS, PETITIONER

v.

EDWARD P. AHRENS, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE OF THE UNITED STATES DEPARTMENT OF JUSTICE, CHICAGO DISTRICT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 13–15) is reported at 276 F. 2d 483.

JURISDICTION

The judgment of the court of appeals was entered on April 8, 1960 (Pet. App. 16). A petition for a rehearing was denied on May 9, 1960 (Pet. App. 16). The petition for a writ of certiorari was filed on July 18, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the petitioner, an alien crewman who claims that he intended to remain in the United States when he procured a conditional landing permit, could properly be deported for overstaying that permit, or whether he had to be charged as one who procured entry by fraud.

STATUTES INVOLVED

Section 7 of Public Law 85-316, Act of September 11, 1957, 71 Stat. 640 (8 U.S.C. 1251a), provides:

> The provisions of section 241 of the Immigration and Nationality Act relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as (1) aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation, * * * shall not apply to an alien otherwise admissible at the time of entry who (A) is the spouse * * * of an alien lawfully admitted for permanent residence; * * *. After the effective date of this Act, any alien who is the spouse * * * of an alien lawfully admitted for permanent residence and who is excludable because (1) he seeks, has sought to procure, or has procured, a visa or other documentation, or entry into the United States by fraud or misrepresentation, or (2) he admits the commission of perjury in connection therewith, shall hereafter be granted a visa and admitted to the United States for permanent residence, if otherwise admissible, if the Attorney General in his discretion has consented to the alien's applying or reapplying

for a visa and for admission to the United States.

The Immigration and Nationality Act of June 27, 1952, 66 Stat. 163, provides in pertinent part:

Section 101, 66 Stat. 167 (8 U.S.C. 1101):

* * * * *

(a)(15) The term "immigrant" means every alien except an alien who is within one of the following classes of non-immigrant aliens—

* * * * *

(D) an alien crewman serving in good faith as such in any capacity required for normal operation and service on board a vessel (other than a fishing vessel having its home port or an operating base in the United States) or aircraft, who intends to land temporarily and solely in pursuit of his calling as a crewman and to depart from the United States with the vessel or aircraft on which he served or some other vessel or aircraft;

* * * * *

Section 241, 66 Stat. 204 (8 U.S.C. 1251):

(a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

(1) at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry;

(2) entered the United States without inspection or at any time or place other than as designated by the Attorney General or is in the United States in violation of this Act or in violation of any other law of the United States;

* * * * *

Section 252, 66 Stat. 220 (8 U.S.C. 1282):

> (a) * * * If an immigration officer finds upon examination that an alien crewman is a non-immigrant under paragraph (15)(D) of section 101(a) and is otherwise admissible and has agreed to accept such permit, he may, in his discretion, grant the crewman a conditional permit to land temporarily pursuant to regulations prescribed by the Attorney General, subject to revocation in subsequent proceedings as provided in subsection (b), and for a period of time in any event, not to exceed—
>
> (1) the period of time (not exceeding twenty-nine days) during which the vessel or aircraft on which he arrived remains in port, if the immigration officer is satisfied that the crewman intends to depart on the vessel or aircraft on which he arrived; or
>
> (2) twenty-nine days, if the immigration officer is satisfied that the crewman intends to depart, within the period for which he is permitted to land, on a vessel or aircraft other than the one on which he arrived.

* * * * *

STATEMENT

The petitioner was ordered deported as a crewman who had overstayed the period of the conditional landing permit granted to him on January 21, 1957. In a complaint filed in the United States District Court for the Northern District of Illinois, he attacked the order of deportation, claiming that since, by his own admission, when he obtained the temporary landing permit, he fraudulently concealed his

intent to remain permanently in the United States,[1] he did not enter as a bona fide nonimmigrant. He argued that therefore he could not be deported under Section 241(a)(2) as a nonimmigrant who remained for a longer time than permitted, but could be deported only under Section 241(a)(1) as an alien who entered without proper documentation. He also claimed that, if deportable on the latter ground, he would be eligible for relief from deportation under the Act of September 11, 1957 (8 U.S.C. 1251a, *supra*, p. 2), as the husband of an alien admitted for permanent residence (R. 1–6). The petitioner had married such an alien in April, 1958.

The district court dismissed the complaint (R. 7–8) and the court of appeals affirmed (Pet. App. 13–16), holding that the petitioner had no "power to substitute for his own convenience a ground not involved in the deportation proceedings" (Pet. App. 15).

ARGUMENT

The sole charge against the petitioner in the administrative proceedings and the charge upon which his deportation was upheld in the courts below, was that under Section 241(a)(2) of the Immigration and Nationality Act (*supra*, p. 3), as a nonimmigrant under Section 101(a)(15) of the Act (*supra*, p. 3), he had remained in the United States for a longer time than permitted. By overstaying the time limit prescribed by his conditional landing permit, he was in this

[1] In a sworn statement given to a Service investigator on August 6, 1958, petitioner had stated that at the time of entry he had intended to reship again before 29 days, but at the deportation hearing he testified that at the time of his entry in January 1957 he intended to remain in the United States.

country in violation of the law of the United States under Section 241(a)(2), and thus subject to deportation. Cf. *Philippides* v. *Day*, 283 U.S. 48.

The conditional landing permit was issued pursuant to Section 252 of the Act (*supra*, p. 4) by the immigration officer only after he was "satisfied that the crewman intend[ed] to depart" after expiration of its time limit. See also 8 C.F.R. 252.1 (d). What the petitioner said and the documents he submitted to the officer, rather than his subjective intent or concealed motive for wishing shore leave, were determinative of his status as a nonimmigrant. Cf. *United States* v. *Prince Line*, 189 F. 2d 386, 389 (C.A. 2).[2] As a practical matter, unless immigration inspectors can rely upon statements by crewmen that their stays will be temporary without necessity for speculation as to whether they harbor concealed intentions to remain permanently, the established practice of issuing conditional landing permits would become completely ineffective. If the petitioner had stated at the outset that he intended to stay in the United States permanently, he would not have been permitted to enter at all, as he well knew.[3] Accordingly he was deportable

[2] The Board of Immigration Appeals observed in its opinion that the petitioner "was actually admitted as a nonimmigrant as a result of [his] representations that he was a bona fide seaman" (A. 3). "A" refers to the record of the deportation proceedings containing 46 pages numbered in pencil, in the Immigration Service file, a copy of which we are filing with the Clerk of this Court.

[3] The petitioner testified at his deportation hearing that at the time of entry he did not tell the Service representative that he intended to remain permanently in the United States "because if I had told him he would not have given me that little pass that they give" (A. 29).

under the single charge presented in his deportation hearing for overstaying the time limit of his conditional landing permit.

Decisions have held, in various contexts, that one who, at the time of his entry as a nonimmigrant for a temporary stay, actually harbors the intent to remain permanently is not a bona fide nonimmigrant—that the concealed intent renders the entry invalid *ab initio*. The cases which petitioner cites are to this effect. It may be that, on the rationale of those decisions, the petitioner could also have been deported under Section 242(a)(1) as an excludable alien who obtained documentation by fraud or misrepresentation. But, whether he was or was not a bona fide nonimmigrant when he entered, the petitioner clearly has overstayed the conditions of his temporary entry and is thus in the United States illegally.[4] He is therefore deportable under Section 242(a)(2).

The petitioner is mistaken in his assumption that, if deportable under Section 241(a)(1), he would be eligible for relief under 8 U.S.C. 1251a. That section provides for relief to the spouse of a citizen or resident alien who would be excludable for having procured a visa "or other documentation, or entry into the United States by fraud or misrepresentation" if the alien was "otherwise admissible at the time of

[4] In *Sleddens* v. *Shaughnessy*, 177 F. 2d 363 (C.A. 2), the alien was ordered deported as an immigrant who at time of entry was not in possession of a valid immigration visa, and his deportation upon that ground alone was upheld. A charge against the alien for having overstayed his leave as a business visitor was not sustained administratively. The speculation by the court that this was because the two charges were inconsistent is dictum.

entry" (*supra*, p. 2). This section obviously refers to those who gained admission to the United States for permanent residence, but would be deportable because of fraud in gaining such admission.[5] The same statute in granting relief to aliens who misrepresented their nationality in applying for a visa, makes such a misrepresentation unavailing to excuse deportation if made "for the purpose of evading the quota restrictions of the immigration laws". In this case, accepting the petitioner's argument that he gained temporary entry by fraud, he was not "otherwise admissible" at the time of entry since he had no right to remain permanently in the United States. He thus is not within the class granted relief by Section 1251a.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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[5] The petitioner erroneously argues (see Pet. 9–10) that footnote 1 in the opinion below (Pet. App. 15) embodies a holding that 8 U.S.C. 1251a excuses only a fraudulent entry as a result of a fraudulent marriage (admittedly not involved here), pursuant to 8 U.S.C. 1251(c). The only holding of the court, however, was that petitioner was deportable solely for overstaying his 29-day time limit, his deportation not being based upon any charge of fraud or misrepresentation. The court did not find it necessary to reach the question as to applicability of 8 U.S.C. 1251a.

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